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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 78

QUINCY BULLOCK,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

BRIEF FOR PETITIONER

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BRIEF FOR PETITIONER

Opinion Below

The Opinion of the Supreme Court of South Carolina is reported at 111 S.E. (2d) 657, and is set forth at (R. 261[1]).

Jurisdiction

The judgment of the Court of General Sessions of Dillon County was affirmed by the Supreme Court of South Carolina on November 16, 1959. Rehearing was denied December 14, 1959. Petition for Writ of Certiorari and Motion for leave to proceed in Forma Pauperis was granted May 2, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257 (3), petitioner having as-

[1] Page reference "R. ——" are to pages in the printed record.

serted in the Courts below rights, privileges and immunities conferred by the Constitution of the United States.

Question Involved

Whether due process of law guaranteed by the Fourteenth Amendment was denied petitioner, an illiterate Negro, by introduction into evidence of his "confessions" and inculpatory statements made following sustained interrogation in different locations, punctuated by beatings while a sheet was placed over his head, while he was held incommunicado in the Dillon and Marion County jails from August 7, 1958 to August 11, 1958.

Statutes Involved

Constitution of the United States—
Fourteenth Amendment.

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statement of Case

Petitioner, an illiterate Negro, was arrested by the Sheriff of Dillon County, South Carolina, on August 7, 1958 (R. 86) and questioned about the death of Carolyn Barfield Wolshock who was shot to death on August 3, 1958 in a cemetery on the outskirts of the Town of Dillon

in Dillon County, South Carolina. Petitioner denied commission of the crime (R. 87) and, though he was not charged with same, he was held incommunicado on open charge from the day of his arrest through the following day, during which time he was continuously questioned by several Police Officers in various locations (R. 92, 97, 193, 195). Petitioner was removed from the new jail of Dillon County on the morning of August 8, 1958 and taken to the old jail which houses no prisoners (R. 92, 93). At the old jail, petitioner was questioned at length by several officers concerning the homicide and was brutally beaten while a sheet was placed over his head (R. 195). Later in the afternoon, petitioner was taken from the old jail to the County Court House into the Judge's Chambers adjoining the Courtroom. A crowd of several hundred persons had gathered around the old jail at the time petitioner was transferred to the County Court House (R. 94). After protracted questioning by several officers, petitioner admitted ownership and possession of a .22 Cal. Pistol and was taken to his home where the gun was retrieved. Thereafter, petitioner was taken to a Motel on the outskirts of the Town of Dillon and, finally, into adjoining Marion County to the Marion County Jail where, still in the presence of four or five officers including the Sheriff of Marion County, petitioner "confessed" by saying "if you say I done it, I done it" (R. 97). Petitioner was thereafter further held incommunicado in the Marion County jail until Monday, August 11, 1958 at which time he signed the first inculpatory statement. Thereafter petitioner was taken to the place the crime was committed where he again denied commission of the crime (R. 200). Approximately an hour after signing the first statement, petitioner signed a second statement. Both statements were typed by a deputy sheriff (R. 101). At no time during the entire period of detention commencing with his arrest on Au-

gust 7, 1958 and continuing to August 11, 1958, when the first "confession" was signed, was petitioner advised by counsel, nor advised of his right to counsel; he was not advised of his right to remain silent, or that anything said by him might be used against him; nor was he advised of his right to demand a hearing before the proper State Official. Neither was petitioner taken before a Magistrate and a warrant procured, as required by State statute. Petitioner saw and conversed with his wife briefly on Friday, August 8, 1958 (R. 167, 171, 172, 174), she being also under arrest in connection with the same crime for which petitioner was being held (R. 166). At no other time during said period was petitioner permitted to confer with members of his family or his friends. All of the investigating officers who came in contact with petitioner are white.

At his trial which commenced on October 20, 1958, petitioner's confessions and inculpatory statements were received in evidence over the vigorous objections of His Court appointed Counsel (R. 104). After receipt of this and other evidence, petitioner was found "guilty of [redacted]" and sentenced to die in the electric chair.

In his appeal of said conviction to the South Carolina Supreme Court, petitioner contended by assignment of error, among other things, that the lower Court erred in receiving the confessions as evidence on the ground that they were obtained by duress and coercion and that the use of said confessions as evidence violated petitioner's right to due process of law, protected by the Fourteenth Amendment to the United States Constitution. This and other assignments of error were rejected by the South Carolina Supreme Court as being without merit.

ARGUMENT

Due Process of Law Guaranteed by the Fourteenth Amendment Was Denied Petitioner, an Illiterate Negro, by Introdution Into Evidence of His "Confessions" and Inculpatory Statements Made Following Sustained Interrogation in Different Locations, Punctuated by Beatings While a Sheet Was Placed Over His Head, While He Was Held Incommunicado in the Dillon and Marion County Jails From August 7, 1958 to August 11, 1958.

Petitioner submits that examination of all of the uncontradicted testimony concerning the making of the confessions, the conclusion is inescapable that they were obtained by duress and coercion.

In *Chambers* v. *Florida*, 309 U.S. 227, 60 S.Ct. 472, 84 L.Ed. 716, where a conviction based upon confessions induced by fear and duress was reversed, this Court reemphasized the challenging role of our judiciary in such cases, stating:

> "Under our constitutional system, courts stand against any winds that blow as havens of refuge for those who might otherwise suffer because they are helpless, weak, outnumbered, or because they are nonconforming victims of prejudice and public excitement. . . . No higher duty, no more solemn responsibility rests upon this court than that of translating into living law and maintaining these constitutional shields deliberately planned and inscribed for the benefit of every human being subject to our constitution of whatever race, creed, or persuasion" (at p. 241).

And, in *Blackburn* v. *Alabama*, —— U.S. ——, 4 L.Ed. (2d) 242, 80 S.Ct. 274, Mr. Chief Justice Warren, stated:

"But neither the likelihood that the confession is untrue nor the preservation of the individual's freedom of will is the sole interest at stake. As we said just last term, 'the abhorrence of society to the use of involuntary confessions . . . also turns on the deep rooted feeling that the police must obey the law while enforcing the law; that in the end, life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves.' Spano v. New York, supra (360 U.S. at 320, 321). Thus a complex of values underlies the strictute against use by the state of confessions which by way of convenient shorthand, this court terms involuntary, and the role played by each in any situation varies according to the particular circumstances of the case."

Petitioner was arrested by the Sheriff of Dillon County, South Carolina on August 7, 1958 and as late as August 11, 1958, at which time both "confessions" were signed, had not been taken before a Magistrate or Judge. Yet, throughout most of this period petitioner was detained in close proximity of a Magistrate.

It appears that South Carolina does not have a statute requiring that a person arrested by a sheriff without a warrant must be forthwith taken before a Magistrate or Judge, as the Court had before it in *Payne* v. *Arkansas*, 356 U.S. 560, 78 S.Ct. 844, or in *Fikes* v. *Alabama*, 352 U.S. 191, 77 S.Ct. 281. However, there is a South Carolina statutory provision requiring that a deputy sheriff who makes an arrest without a warrant must forthwith take such prisoner before a Magistrate.[2] It is submitted, how-

[2] Section 43-222, Code of Laws of South Carolina, 1952.

"When an arrest is made by a deputy sheriff without a warrant pursuant to Section 53-85 the person so arrested shall be forthwith carried before a magistrate and a warrant of arrest procured and disposed of as the magistrate shall direct."

ever, that it is fundamental in American jurisprudence that a person cannot be unreasonably detained by an arresting officer without the safeguard contemplated by Rule 5 (a) of the Federal Rules of Criminal Procedure, the purpose of which was set forth in *Mallory* v. *United States,* 354 U.S. 455, 77 S.Ct. 1356, quoting *McNabb* v. *United States,* 318 U.S. 332, 343, 344, 63 S.Ct. 608, 87 L.Ed. 819:

> "The purpose of this impressively pervasive requirement of criminal procedure is plain. . . . The awful instruments of the criminal law cannot be entrusted to a single functionary. The complicated process of criminal justice is therefore divided into different parts, responsibility for which is separately vested in the various participants upon whom the criminal law relies for its vindication. Legislation such as this, requiring that the police must with reasonable promptness show legal cause for detaining arrested persons, constitutes an important safeguard—not only in assuring protection for the innocent but also in securing conviction of the guilty by methods that commend themselves to a progressive and self-confident society. For this procedural requirement checks resort to those reprehensible practices known as the 'third degree' which, though universally rejected as indefensible, still find their way into use. It aims to avoid all the evil implications of secret interrogation of persons accused of crime."

The petitioner maintained throughout the trial that he had been severely beaten. His wife testified that when she saw her husband at the jail he showed unmistakable signs of having been beaten.

In the instant case the record discloses many facts, each of which this Court has held to be relevant on the issue of coercion:

(a) It was shown that petitioner is a Negro (R. 75). In ascertaining whether a confession is coerced, this Court gives weight to fact that the accused is a member of an unpopular racial group. *Chambers* v. *Florida, supra; Harris* v. *South Carolina,* 338 U.S. 68, 93 L.Ed. 1815, 69 S.Ct. 357.

(b) It was shown that petitioner is illiterate (R. 140, 197). The degree of education which an accused has had is an important factor in evaluating whether a confession has been coerced. *Ward* v. *Texas,* 316 U.S. 547, 62 S.Ct. 1139, 86 L.Ed. 1663; *Harris* v. *South Carolina, supra.*

(c) Petitioner was held incommunicado from the time of his arrest on Thursday, August 7th until Monday, August 11th, with the exception that he saw and conversed with his wife briefly on Friday, August 8th at the jail, she being also under arrest. Nor, during this period was petitioner taken before a Magistrate and a warrant procured against him. Holding an accused incommunicado and without charge is relevant in determining whether a confession has been coerced. *Fikes* v. *Alabama,* 352 U.S. 191, 77 S.Ct. 281, —— L.Ed. ——; *Harris* v. *South Carolina, supra; Turner* v. *Pennsylvania,* 338 U.S. 62, 69 S.Ct. 1352, 93 L.Ed. 1810; *Stein* v. *New York,* 346 U.S. 156, 73 S.Ct. 1077, 97 L.Ed. 1522.

In *Stein* v. *New York, supra,* Mr. Justice Jackson said:

> "To delay arraignment, meanwhile holding the suspect incommunicado, facilitates and usually accompanies the use of third degree methods. Therefore this Court regards such occurrences as relevant circumstantial evidence in the inquiry as to physical or psychological coercion."

And, in *Fikes* v. *Alabama*, Mr. Justice Frankfurter in a note to his concurring opinion said:

> "Flouting of the requirement of prompt arraignment prevailing in most States is in and of itself not a denial of due process. Cf. McNabb v. United States, 318 U.S. 332, 63 S.Ct. 608, 87 L.Ed. 819. But it is to disregard experience not to recognize that the ordinary motive for such extended failure to arraign is not unrelated to the purpose of extracting confessions."

(d) It was shown that petitioner was continuously questioned by several persons in authority (R. 92, 97, 193, 195). Continuous interrogation has been deemed an important factor in evaluating whether a confession has been coerced. *Chambers* v. *Florida, supra; Ward* v. *Texas*, 316 U.S. 547, 62 S.Ct. 1139, 86 L.Ed. 1663; *Ashcraft* v. *Tennessee*, 322 U.S. 143, 64 S.Ct. 921, 88 L.Ed. 1192; *Haley* v. *Ohio*, 332 U.S. 596, 68 S.Ct. 302, 92 L.Ed. 224.

(e) It was shown that petitioner was moved from one jail to an older, vacant jail, then to the Judge's Chambers adjoining the Courtroom, then to a Motel and, finally, to a jail in an adjoining County, all in the presence of a large number of persons in authority and under the threat of mob violence (R. 92, 93). In determining whether a confession has been coerced, such conduct is considered relevant. *Ward* v. *Texas, supra.*

(f) Petitioner did not consult with a lawyer during the period between August 7th and August 11th and at no time prior to the signing of the "confessions" or the making of the inculpatory statements was he advised of his right to remain silent and demand a hearing. This Court condemned similar conduct in *Harris* v. *South Carolina, supra.*

Petitioner submits that nowhere were procedures and safeguards compatible with the requirements of due process present in this matter.

As was stated in *Payne* v. *Arkansas*, 356 U.S. 567, 78 S.Ct. 851, —— L.Ed. ——:

> "It seems obvious from the totality of this course of conduct—that the confession was coerced and did not constitute an 'expression of free choice,' and that its use before the jury, over petitioner's objection, deprived him of 'that fundamental fairness essential to the very conduct of justice,' and, hence, denied him due process of law, guaranteed by the Fourteenth Amendment."

In the face of this Court's decisions which were cited and reiterated in the Petition for Rehearing (R. 272) the Court below rejected petitioner's assertion that his "confessions" and inculpatory statements were obtained by duress and coercion in violation of the Fourteenth Amendment's command.

Concerning petitioner's assertion that he was held incommunicado from the time of his arrest on Thursday, August 7th until Monday, August 11th, with the exception that he saw and conversed with his wife briefly on Friday, August 8th at the jail, she being also under arrest, the State Supreme Court noted that it did not appear that petitioner requested to see any person and such privilege refused. But the practice of holding suspects in this manner has such wide practice that it might properly be considered the subject of judicial notice. Further, petitioner was transferred to adjoining Marion County, Friday, August 8th, where he remained until Monday, August 11th (R. 92, 93). In light of the fact that petitioner was at least suspected of having committed such an atrocious crime

and had in fact made the first inculpatory statement on Friday evening (August 8th), there is certainly a presumption that he was being held incommunicado.

The Court below conceded that petitioner was moved from the new jail to the older, vacant jail, then to the Judge's Chambers adjoining the Courtroom, then to a Motel and, finally, to a jail in an adjoining County, all in the presence of a large number of persons in authority but concluded that "it does not appear that this fact in anywise influenced the making of the confessions." But it must be obvious that such action on the part of the authorities placed petitioner in such a state of fear that it was virtually impossible for him to remain silent. As was stated by Mr. Justice Frankfurter in *Watts* v. *Indiana*, 338 U.S. 49, 69 S.Ct. 1347, 93 L.Ed. 1801: "There is torture of mind as well as body" and further, "the will is as much affected by fear as by force."

Further, the Court below observed that the confession of petitioner is corroborated in a number of details. But in *Gallegos* v. *Nebraska*, 342 U.S. 55, 63 S.Ct. 141, this Court stated that "the use of any confession obtained in violation of due process requires the reversal of a conviction, even though unchallenged evidence, adequate to convict, remains." And, in *Blackburn* v. *Alabama*, this Court stated: "consequently, we have rejected the argument that the introduction of an involuntary confession is immaterial where other evidence establishes guilt or corroborates the confession. E.g., *Spano* v. *New York*, 360 U.S. 315, 324, 3 L.Ed. (2d) 1265, 1272, 79 S.Ct. 1202."

The evidence touching upon petitioner's assertion of brutality is admittedly in conflict but it is uncontradicted that when his wife saw him on Friday afternoon, August 8th, his face was swollen to the extent that his eye was

almost closed and he "couldn't half walk" (R. 167, 171, 172, 174).[3]

It is submitted that every aspect of the treatment which petitioner received from the time of his arrest on August 7th until he signed the "confessions" on August 11th is found in the leading cases in this Court condemning exaction of involuntary confessions.

The uncontradicted facts shown by the record herein make applicable the conclusion reached in *Chambers* v. *Florida*, 309 U.S. 227, 241, 60 S.Ct. 472, 479, 84 L.Ed. 716:

> "Due process of law, preserved for all by our constitution, commands that no such practice as that disclosed by this record shall send any accused to his death."

[3] Reply testimony offered by the State was to the effect that on Monday, August 11th, petitioner's face was not swollen (R. 236).

Conclusion

The record clearly shows that petitioner's conviction was based upon a confession extorted from him through the use of force, duress and intimidation. The refusal of the Supreme Court of South Carolina to reverse the conviction upon the federal claim properly presented to it constitutes a violation of rights guaranteed petitioner by the Fourteenth Amendment to the United States Constitution.

Wherefore, it is respectfully submitted that the judgment of the Supreme Court of the State of South Carolina should be reversed.

Respectfully submitted,

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